

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 603 OF 2014

DISTRICT : NAVI MUMBAI

Manjusha Arun Joshi,)
R/at Sector 16, AL, 1/490,)
Airoli, Navi Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Secretary,)
Department of Vocational)
Education & Training,)
Mumbai Region, Mumbai.)
2. Industrial Training Institute)
Mandangad, Ratnagiri.)
3. Industrial Training Institute,)
Dadar (girls) 5th floor,)
374, Veer Savarkar Marg,)
Dadar [W], Mumbai 400 028.)...**Respondents**

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Shri S.S. Oka, learned advocate for the Applicant.

Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 18.02.2016

ORDER

1. Heard Shri S.S. Oka, learned advocate for the Applicant and Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 7.10.2013 by which the Applicant was reappointed as Craft Instructor in Dress Making ignoring her past services. The Applicant is seeking regularization of service from 8.3.1999.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Craft Instructor in Dress Making, initially on 23.8.1996 for a short period. She was continued in service and her services were regularized w.e.f 8.3.1999 by order dated 21.7.1999. By order dated 25.8.2005, her services were terminated. The Applicant filed O.A no 756 of 2005. By order dated 24.3.2006, this

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Tribunal quashed the order dated 25.8.2005 and directed the Respondents to give her an opportunity to improve her qualifications. The Applicant passed the requisite examination on 7.3.2008. The Applicant requested that she may be granted the same Pay which was getting it earlier, before her services were terminated. However, the Respondents paid her in the minimum of the pay scale, i.e. at Rs. 5500/- in the scale of Rs. 5500-9000. Learned Counsel for the Applicant argued that the Applicant had fulfilled the conditions of order dated 24.3.2006 passed by this Tribunal in O.A no 756/2005 and therefore, she was eligible to be deemed to be in service on regular basis from 8.3.1999, and should have been given pay etc accordingly and also be granted Time Bound Promotion after 12 years from 8.3.1999. However, the Respondents have misinterpreted the orders of this Tribunal and have regularized her services by order dated 8.10.2013 w.e.f 8.3.2011. Learned Counsel for the Applicant argued that this order is wrong and unsustainable.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that this Original Application is misconceived. The Applicant did not fulfill the qualifications required for the post of Craft Instructor in Dress Making when she was initially appointed on ad hoc basis on 23.8.1996. Even when her services were regularized w.e.f 8.3.1999, she did not have requisite

qualification. Though the services of the Applicant were continued pursuant to the order of this Tribunal dated 24.3.2006 in O.A no 756/2005, that was done only with a view to give a chance to the Applicant to improve her qualifications. A person cannot be appointed on regular basis, unless he/she has requisite qualifications for the post as per Recruitment Rules. Admittedly, the Applicant acquired that qualification only on 7.3.2008. In addition, she was required to have three years' experience as per recruitment rules. Accordingly, her services have been regularized from 8.3.2011. Learned Presenting Officer argued that Hon'ble Supreme Court has held in **SECRETARY, STATE OF KARNATAKA Vs. UMADEVI (2006) 4 SCC 1**, that an appointment against rules and regulations governing such appointment cannot be regularized. In the present case, order dated 21.7.1999 regularizing Applicant's service w.e.f 8.3.1999 cannot survive the test of legality. Learned Presenting Officer argued that the Applicant cannot claim any benefit, in violation of rules. When the Applicant acquired the basic educational qualification for the post of Craft Instructor on 7.3.2008, and acquired 3 years experience on 8.3.2011, there is no question of regularizing her service before the date when she acquired the qualifications essential to be appointed on that post.

5. It is seen that the following qualifications are required for the post of Craft Instructor as per the Craft

Instructor, Class-III in Industrial Training Institute and basic training and Related Instructions Centre in the Department of Technical Education (Recruitment) Rules, 1983 (notified on 18.11.1983), viz

“3(B)II(a): a Diploma at least in second class in appropriate branch of Engineering or Technology at the Board of Technical Education, Bombay its equivalent qualification; or

(b) have passed the Second School Certificate Examination with Mathematics and Science or its equivalent Examination; and possess either-

(i) National Apprenticeship Certificate in the appropriate Trade of the National Council for Training in Vocational Trades or its equivalent;....and

(iii) have practical experience in appropriate trade for a period of not less than four years including the minimum period prescribed for training by the persons possessing the qualifications mentioned in sub clause (a) and (b)(i), (ii) and (iii) of clause (B) of this rule.”

From perusal of the Recruitment Rules, it is absolutely clear that the Applicant did not have educational qualification for the post of Craft Instructor when she was appointed in that post initially in 1996 or when her services were ‘regularized’ in 1999. Obviously,

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she could not have been given regular appointment in 1999, when she did not have educational qualifications and other qualification for the post. This Tribunal in O.A no 756/2015 gave the following order.

“(ii) The impugned order dated 25.8.2005 is hereby quashed and set aside.

(iii) The applicant should be reinstated in service immediately.

(iv) The applicant should be given an opportunity to improve her qualification within a reasonable period and in case she fails to attain the qualification, the Respondents are free to follow the procedure and take suitable action. No order as to costs.”

From this, it is clear that the Applicant was ordered to be taken back in service, subject to her acquiring necessary qualifications within a reasonable period. The Respondents were at liberty to terminate her service, if she failed to acquire necessary qualification within a reasonable period. This will make it clear that she was not taken back in service unconditionally. Also, there is no question of this Tribunal having recognized that she was in regular service w.e.f 8.3.1999.

6. In **UMADEVI's** case (supra) Hon'ble Supreme Court has quoted from its earlier decision in **ASHWANI**

KUMAR & ORS Vs. STATE OF BIHAR & ORS with approval:

“ A need may then arise in the light of exigency of administrative requirement for waiving such irregularities in the initial appointment by a competent authority and the irregular initial appointment may be regularized and security of tenure may be made available to the incumbent concerned. But even in such a case, the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment.” (emphasis supplied).

In the present case, the initial entry of the Applicant in service was totally illegal and her service cannot be regularized. Further, in the same order Hon'ble Supreme Court has held that:-

“Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily held that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.”

In the present case, appointment of the Applicant was not in terms of the relevant rules and she was not even

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qualified. The request of the Applicant that her appointment may be treated as regular w.e.f 8.3.1999 is unsustainable.

7. The Respondents have given regular appointment to the Applicant after she had acquired qualifications for the post of Craft Instructors in terms of educational qualification and experience w.e.f 8.3.2011. The appointment prior to that was only due to orders of this Tribunal. The Applicant was not qualified for the post to which she was appointed. The Applicant cannot, therefore, claim anything more than what has already been paid to her. She will not be entitled to any service benefits prior to 8.3.2011.

8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.



~~(R.B. Malik)
Member (J)~~

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 18.02.2016
Dictation taken by A.K. Nair.